

James L. Bromley
Robert A. Sacks
Adam S. Paris
Christian P. Jensen
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Diane L. McGimsey (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
1888 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

Counsel for Debtor SVB Financial Group

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____	x	
In re	:	Chapter 11
	:	
SVB FINANCIAL GROUP, ¹	:	Case No. 23-10367 (MG)
	:	
Debtor.	:	
	:	
_____	x	

**DEBTOR’S STATEMENT OF THE ISSUES TO BE PRESENTED AND
DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

¹ The last four digits of SVB Financial Group’s tax identification number are 2278.

SVB Financial Group (“Debtor”) hereby submits under Rule 8009 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of New York (“Local Rules”) this statement of issues to be presented and designation of items to be included in the record with respect to Debtor’s appeal from the Court’s Memorandum Opinion and Order (“Order”) (Dkt. No. 1380) sustaining the confirmation objection of the Federal Deposit Insurance Corporation (“FDIC”), as Receiver for Silicon Valley Bank (“FDIC-R1”) and Silicon Valley Bridge Bank, N.A. (“FDIC-R2,” and together with FDIC-R1, “FDIC-Rs”).

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred by sustaining FDIC-Rs’ objection to the extinguishment of their purported defensive setoff rights pursuant to Debtor’s chapter 11 plan?
2. Whether the Bankruptcy Court erred by concluding that FDIC-R1’s purported setoff right is not a “claim” under 11 U.S.C. § 101(5)?
3. Whether the Bankruptcy Court erred by concluding that FDIC-R1—a creditor who prior to the bar date was aware of the subject matter for which it claims a setoff right—did not waive its setoff right by failing to either file a proof of claim or seek relief from the automatic stay before the bar date?
4. Whether the Bankruptcy Court erred by concluding that FDIC-R1’s setoff right was not discharged by the confirmation of Debtor’s chapter 11 plan under 11 U.S.C. §§ 524 and 1141, where FDIC-R1 intentionally did not file a proof of claim or seek relief from the automatic stay before the bar date?
5. Whether the Bankruptcy Court erred by concluding that FDIC-R1’s setoff right was not precluded under 11 U.S.C. § 553(a)(3) where FDIC-R1 incurred deposit liability to Debtor two days “before the filing of [Debtor’s bankruptcy] petition,” “while [Debtor] was insolvent,” and “for the purpose of obtaining a right of setoff against” Debtor?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Debtor designates the following items from the docket maintained in the above-captioned chapter 11 case for inclusion in the record on appeal, including any exhibit, annex, or addendum thereto:

Docket No.	Date	Docket Text
21	3/19/2023	Declaration of William C. Kosturos in Support of the Debtors Chapter 11 Petition and First Day Pleadings filed by James L. Bromley on behalf of SVB Financial Group
33	3/20/2023	Objection to Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtor to (A) Continue to Use its Cash Management System, Including Existing Bank Accounts, (B) Pay or Honor Certain Prepetition Obligations Related Thereto and (C) Maintain Existing Business Forms, (II) Authorizing Investment Activities, (III) Temporarily Waiving the Requirements of Section 345(b) and (IV) Granting Related Relief (related document(s)20) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank (“FDIC-R”)
373	6/29/2023	Order, Signed on 6/29/2023, Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof (Related Doc # 320)
1096	5/6/2024	Statement Notice of Order of United States District Court for the Northern District of California Striking FDIC-R1’s May 2024 Statement filed by James L. Bromley on behalf of SVB Financial Group

Docket No.	Date	Docket Text
1179	5/30/2024	Disclosure Statement Notice of Filing of Solicitation Version of Disclosure Statement filed by James L. Bromley on behalf of SVB Financial Group
1268	7/8/2024	Objection to Confirmation of Amended Plan (related document(s)1175) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank (“FDIC-R”)
1306	7/18/2024	Reply to Motion Debtor’s Reply to the Plan Objection of the Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A. filed by Robert A Sacks on behalf of SVB Financial Group
1307	7/18/2024	Memorandum of Law Debtor’s Memorandum of Law (I) in Support of Confirmation of the Second Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and (II) in Response to Objections Thereto filed by James L. Bromley on behalf of SVB Financial Group
1308	7/18/2024	Declaration of William C. Kosturos in Support of Confirmation of the Chapter 11 Plan of Reorganization of SVB Financial Group filed by James L. Bromley on behalf of SVB Financial Group
1309	7/18/2024	Statement of Official Committee of Unsecured Creditors in Support of Confirmation of the Debtors Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and in Response to Certain Objections Thereto filed by James Savin on behalf of Official Committee of Unsecured Creditors of SVB Financial Group

Docket No.	Date	Docket Text
1310	7/18/2024	Response Reply of the Ad Hoc Group of Senior Noteholders (I) to the Hildene Objection and (II) in Support of Confirmation of the Debtor's Second Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code (related document(s)1307, 1306) filed by Elliot Moskowitz on behalf of Ad Hoc Group of Senior Noteholders
1313	7/18/2024	Notice of Agenda for Confirmation Hearing to be Held July 22, 2024, at 9:00 A.M. (Prevailing Eastern Time) filed by James L. Bromley on behalf of SVB Financial Group
1319	7/19/2024	Pre-Trial Order signed on 7/19/2024
1330	7/23/2024	Notice of Filing of Confirmation Hearing Presentation filed by James L. Bromley on behalf of SVB Financial Group
1332	7/24/2024	Chapter 11 Plan Notice of Filing of Further Revised Plan of Reorganization Under Chapter 11 of the Bankruptcy Code filed by James L. Bromley on behalf of SVB Financial Group
1343	7/26/2024	Declaration OF LUIS MAYORGA PURSUANT TO COURTS DIRECTION AT THE JULY 24, 2024, CONFIRMATION HEARING filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1348	7/26/2024	Amended Declaration of Luis Mayorga Pursuant to Court's Direction at the July 24, 2024, Confirmation Hearing (related document(s)1343) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")

Docket No.	Date	Docket Text
1349	7/26/2024	Notice of Filing of Amended Declaration of Luis Mayorga Pursuant to Courts Direction at the July 24, 2024, Confirmation Hearing (related document(s)1348) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1351	7/28/2024	Second Amended Declaration of Luis Mayorga Pursuant to Court's Direction at the July 24, 2024, Confirmation Hearing (related document(s)1348) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1352	7/28/2024	Notice of Filing of Second Amended Declaration of Luis Mayorga Pursuant to Court's Direction at the July 24, 2024, Confirmation Hearing (related document(s)1351) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
Unredacted Version Filed Under Seal (Redacted Version Filed at Dkt. No. 1353)	7/29/2024	Declaration of Robert A. Sacks filed by Robert A Sacks on behalf of SVB Financial Group
1373	8/1/2024	Declaration of Janine D. Henkes filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1374	8/1/2024	Declaration of Sharon E. Kelley filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1376	8/1/2024	Response / FDIC-R1's Response to Arguments Set Forth in the Declaration of Robert A. Sacks (related document(s)1353) filed by Kurt F. Gwynne on behalf of Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank ("FDIC-R")
1378	8/2/2024	Letter Regarding FDIC-R1's Sur-Sur-Reply Filed by Robert A Sacks on behalf of SVB Financial Group

Docket No.	Date	Docket Text
1379	8/2/2024	Findings of Fact, Conclusions of Law and Order, signed on 8/2/2024, Confirming the Debtor's Second Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code
1380	8/2/2024	Memorandum Opinion and Order signed on 8/2/2024 Sustaining the Objection of the Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A. to the Second Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code
1389	8/9/2024	Notice of Appeal (related document(s)1380) filed by Robert A Sacks on behalf of SVB Financial Group
1406	8/21/2024	Petition Requesting Direct Appeal to Circuit Court (related document(s)1380) filed by Robert A Sacks on behalf of SVB Financial Group
1408	8/21/2024	Transcript regarding Hearing Held on 7/24/2024 at 9:00 AM RE: Hybrid Combined Confirmation Hearing

Debtor further designates the following items admitted into evidence at the July 24, 2024 confirmation hearing for inclusion in the record on appeal. The exhibits have not been filed on the docket maintained in the above-captioned chapter 11 case. Exhibits JX 1 – JX 3, PX 9 – PX 13, DX A – DX W, and DX Z – DX AA are attached hereto pursuant to Local Rule 8009-1(a). Exhibits PX 1, PX 2, PX 3, PX 4, PX 5, PX 6, PX 7, PX 8, DX X, and DX Y are presently omitted pursuant to Bankruptcy Rule 8009(f) because they were designated as “Highly Confidential” by FDIC-Rs or FDIC in its corporate capacity.¹ Debtor’s counsel has raised this

¹ The Court admitted exhibits DX H, DX I, and DX M into evidence as exhibits JX 1, JX 2, and JX 3. (July 24, 2024 Hr’g Tr. at 148:15-149:8.) Exhibits DX H, DX I, and DX M are therefore also omitted.

matter with counsel for FDIC-Rs and intends to file (1) a joint motion to accept the documents under seal with “the court where the appeal is pending” under Bankruptcy Rule 8009(f) or (2) an unredacted version of the sealed documents as soon as practicable.

Exhibits	Parties’ Description
JX 1	April 26, 2023 Bankruptcy Hearing Transcript [Bank. Dkt. No. 215]
JX 2	Statement of the Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank, Pursuant to the Court’s Direction at the April 26, 2023 Hearing [Bankr. Dkt. No. 145]
JX 3	Notice of Filing of Statement of the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank Regarding its Defensive Setoff Rights Against SVB Financial Group [Bankr. Dkt. No. 1081]
PX 1	March 16, 2023 Emails between R. Tetrick (FDIC) and L. Mayorga (FDIC) re: SVBFG Accounts
PX 2	March 17, 2023 Emails between R. Tetrick (FDIC) and L. Mayorga (FDIC) re: SVBFG Accounts (1)
PX 3	March 17, 2023 Emails between R. Tetrick (FDIC) and L. Mayorga (FDIC) re: SVBFG Accounts (2)
PX 4	March 17-18, 2023 Emails between J. Thomas (FDIC) and P. Cox (SVB) re: Hold on SVBFG Accounts
PX 5	March 18, 2023 Letter from J. Bromley (S&C) to K. Gwynne (Reed Smith) and S. Qusba (Simpson Thacher) re: Violations of the Automatic Stay by Bridge Bank and FDIC-R
PX 6	March 19, 2023 Letter from K. Gwynne (Reed Smith) to J. Bromley (S&C) re: Violations of the Automatic Stay by Bridge Bank and FDIC-R

Exhibits	Parties' Description
PX 7	March 19, 2023 Letter from S. Qusba (Simpson Thacher) to J. Bromley (S&C) re: Violations of the Automatic Stay by Bridge Bank and FDIC-R
PX 8	April 3, 2023 Notice to Bridge Bank Depositors of Deposit Transfer to First Citizens
PX 9	June 26, 2023 Letter from R. Sacks to FDIC-C re: SVBFG's Claim for Deposits [Adversary Proceeding Dkt. 53-12]
PX 10	January 5, 2024 FDIC-R1 Notice of Disallowance of Claim [NDCA Action Dkt. 1-2]
PX 11	January 5, 2024 FDIC-R2 Notice of Disallowance of Claim [NDCA Action Dkt. 1-3]
PX 12	June 24, 2024 Letter from K. Gwynne (Reed Smith) to S&C re: FDIC-R1 Objections to Subpoena Document Requests
PX 13	The Debtor's Consolidated Memorandum of Law in Opposition to the Motions to Dismiss of the Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and as Receiver for Silicon Valley Bridge Bank, N.A. [Adv. 23-01137 Dkt. No. 51]
DX A	Complaint filed by the Debtor in the case styled SVB Financial Group v. Federal Deposit Insurance Corporation, in its corporate capacity, and Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A., Adv. Case No. 23-01137 (MG) [Dkt. No. 1]
DX B	Opinion and Order of District Judge Cronan dated December 13, 2023, Case No. 23-7218 (JPC) [S.D.N.Y. Dkt. No. 34]
DX C	Claims filed by the Debtor against FDIC-R1 in the FIRREA claims process [N.D. Cal. Dkt. No. 1-8]

Exhibits	Parties' Description
DX D	Claims filed by the Debtor against FDIC-R2 in the FIRREA claims process [N.D. Cal. Dkt. No. 1-9]
DX E	Complaint filed by the Debtor in the case styled SVB Financial Group v. Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A., Case No. 5:24-cv-01321 (BLF) [N.D. Cal. Dkt. 1]
DX F	Transcript of 3/21/23 Hearing in SVBFG's Bankruptcy Case
DX G	Transcript of 5/17/23 Hearing in SVBFG's Bankruptcy Case
DX J	Memorandum of Law of [FDIC-R1] in Support of its Motion to Dismiss All Counts Against Such Receiver Under Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure [Adv. 23-01137 Dkt. No. 28]
DX K	Reply of [FDIC-R1] in Support of its Motion to Dismiss All Counts Against Such Receiver Under Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure [Adv. 23-01137 Dkt. No. 70]
DX L	Transcript of 10/19/23 Hearing in S.D.N.Y. Action
DX N	Response of the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank to Debtor's Disclosure Statement for Debtor's First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Bankr. Dkt. No. 1111]
DX O	Amended Tax Allocation Agreement [Bankr. Dkt. No. 167-1]
DX P	Joint Case Management Statement and Rule 26(f) Report [N.D. Cal. Dkt. No. 39]
DX Q	Plaintiff SVB Financial Group's Initial Requests for Production of Documents to Defendant Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank [N.D. Cal.]
DX R	SVB's Deposit Agreement and Disclosure Statement – Business Accounts [N.D. Cal. Dkt. No. 33-3]
DX S	Deposit Account Agreements [N.D. Cal. Dkt. No. 33-2]

Exhibits	Parties' Description
DX T	Order Striking Statement Regarding FDIC-R1's Defensive Setoff Rights [N.D. Cal. Dkt. No. 30]
DX U	Statement of the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank Regarding its Defensive Setoff Rights Against SVB Financial Group [N.D. Cal. Dkt. No. 29]
DX V	Docket for Case No. 5:24-cv-01321 (BLF) [N.D. Cal. Action]
DX W	Docket for Case No. 23-7218 (JPC) [S.D.N.Y. Action]
DX X	Wire Recall Cancellations [FDIC-R_SVB2004_00500-00508]
DX Y	3/20/23 email from KFG of Reed Smith to counsel for BNY (Cleary Gottlieb) with copies to James Bromley (S&C) and Sandy Qusba (Simpson Thacher)
DX Z	Complaint filed by Debtor in the case styled SVB Financial Group and Silicon Valley Bank v. Federal Insurance Company and Berkley Regional Insurance Company, Case No. 5:23-cv-00095-BO-RN [E.D.N.C. Dkt. No. 1-3]
DX AA	Summary of and Schedules of Assets and Liabilities for Non-Individuals filed on May 22, 2023 [Bankr. Dkt. No. 261]

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Dated: August 23, 2024
New York, New York

/s/ Robert A. Sacks

James L. Bromley
Robert A. Sacks
Adam S. Paris
Christian P. Jensen
SULLIVAN & CROMWELL LLP
125 Broad Street, New York, NY 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
E-mail: bromleyj@sullcrom.com
sacksr@sullcrom.com
parisa@sullcrom.com
jensenc@sullcrom.com

Diane L. McGimsey (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
1888 Century Park East, Los Angeles, CA 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800
E-mail: mcgimseyd@sullcrom.com

Counsel for Debtor SVB Financial Group